

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: COUNTY COMMISSIONERS, AUDITORS, MUNICIPALITIES, AND TOWNSHIPS

FROM: Cheryl A.W. Musgrave, Commissioner *CWM*

SUBJECT: Fire Protection Districts (Ind. Code § 36-8-11)

DATE: March 20, 2008

## Introduction

The purpose of this memorandum is to revoke and supersede any previously issued directives or guidance from the Department of Local Government Finance ("Department") on the matter of Fire Protection Districts; particularly the Fire Protection District memorandum from this Department dated May 2002.

This memorandum is similar to those previously issued. However, the Department's previous memorandum primarily addressed the petition process by freeholders (i.e., landowners) or municipalities (i.e., cities or towns) to establish a Fire Protection District. This memorandum adds discussion to support the position that a county legislative body may create a Fire Protection District without any additional prerequisites beyond the normal ordinance process. This view was recently articulated by a special judge in Brown County who ruled that a county-wide Fire Protection District established by the Brown County Board of Commissioners through the adoption of an ordinance without a petition filed by freeholders or a municipality was, in fact, a valid manner in which to create a Fire Protection District.

## Fire Protection Districts

1. Fire protection districts may be established by county legislative bodies, freeholders, or municipalities in all 92 Indiana counties. Ind. Code §§ 36-8-11-4, -5.
2. Such districts are established according to the requirements of Indiana Code chapter 36-8-11. A fire protection district may be created for any of the following purposes: (1) Fire protection, including the capability for extinguishing all fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the district; (2) Fire prevention, including identification and elimination of all potential and actual sources of fire hazard; and/or (3) Other purposes or functions related to fire protection and fire prevention. Ind. Code § 36-8-11-4(a).
3. The territory of a district may consist of: (1) one or more townships and parts of one or more townships *in the same county*; or (2) all of the townships *in the same county*. The boundaries of a district need not coincide with those of other political subdivisions (i.e., cities, towns, townships, etc...). Ind. Code § 36-8-11-4(c); Ind. Code § 36-1-2-13. However, the territory of a district may consist of a municipality (i.e., city or town) that is located in more than one county. Ind. Code § 36-8-11-4(d); Ind. Code § 36-1-2-11.

### **Establishment of a Fire Protection District by a County Legislative Body**

4. A county legislative body may establish a Fire Protection District. Ind. Code § 36-8-11-4(a); *see also* Ind. Code § 36-1-3-6. A “Legislative body” for a county may include a board of county commissioners, county council, or a city-county council. Ind. Code § 36-1-2-9.
5. Any area may be established as a Fire Protection District, but one part of a district may not be completely separate from another part. A municipality may be included in a district, but only if it consents by ordinance, unless a majority of the freeholders of the municipality have petitioned to be included in the district. Ind. Code § 36-8-11-4(b); *see also* Ind. Code § 36-1-3-9.
6. This section of the Indiana Code does not specify the method by which a county legislative body may establish a district. However, the Home Rule Act states that it is the policy of the state “to grant units all the powers that they need for the effective operation of government as to local affairs.” Ind. Code § 36-1-3-2.
7. Any doubt as to the existence of a power of a unit (i.e., county, city, town, or township) shall be resolved in favor of its existence. Ind. Code § 36-1-3-3(b); Ind. Code § 36-1-2-23; *see also* Ind. Code § 36-1-3-5(b)(township may not exercise power if another unit in which all or part of the township is located exercises same power). Additionally, a unit may exercise any power it has to the extent that the power: (1) is not expressly denied by the Indiana Constitution or by statute; and (2) is not expressly granted to another entity. Ind. Code § 36-1-3-5(a).
8. **Please be aware that a Notice of Appeal has been filed in a case which originated in the Brown County Circuit Court. The case involved a challenge to the establishment of a county-wide Fire Protection District by the Brown County Board of Commissioners through the adoption of an ordinance without a filed petition by freeholders or a municipality. The Brown County Special Judge determined that county legislative bodies may legally create a district without any additional prerequisite beyond the normal ordinance process. Thus, the Judge ruled that the Board of Commissioners of Brown County could create a Fire Protection District with or without the freeholders of the county filing a petition. The Court of Appeals could uphold the Brown County Court’s decision, or rule in favor of the Plaintiffs/Appellants on the issue of the necessity of a petition for the establishment of a district. In the latter instance, the guidance in this memorandum with respect to the establishment of districts by a county legislative body would, of necessity, have to be revised to reflect such a ruling.**
9. Therefore, a county legislative body may create a Fire Protection District without any additional prerequisites beyond the normal ordinance process. **A copy of the resolution establishing the Fire Protection District must be provided to the Department.**

### **Establishment of a District by Freeholders or a Municipality**

10. *Freeholders* (i.e., landowner) who want to establish a Fire Protection District must file a petition with the County Auditor of the county where the freeholder’s land is located. The petition may also be filed by a *municipality* (i.e., city or town) under an ordinance adopted by its legislative body in each county where the

municipality is located. Ind. Code § 36-8-11-5(a); Ind. Code § 36-8-11-2.

11. The petition must be signed by:

- a. at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the proposed district; or
- b. a majority of those freeholders owning land within the proposed district -- whichever number is less. Ind. Code § 36-8-11-5(b).

***Petitions; Signatures of Joint Owners and Corporations; Circulation of Petition***

12. If two or more freeholders own the same land in joint title, they may be counted as only one freeholder for the purpose of determining what constitutes twenty percent (20%) or a majority of the freeholders. Ind. Code § 36-8-11-6(b).

13. A freeholder owning land in joint title may sign the petition and the signature shall be counted. However, if two or more freeholders who own the same land in joint title sign the petition, their combined signatures count only as one (1) signature. Ind. Code § 36-8-11-6(c).

14. Any officer authorized by a corporation may sign the petition for a private corporation owning land within the proposed district. The signature is prima facie evidence of authorization. Ind. Code § 36-8-11-6(d).

15. The petition may be circulated in several counterparts and still be considered a single petition. Ind. Code § 36-8-11-6(e).

***Contents of Petition to Establish District***

16. A petition filed by freeholders or a municipality must state the following:

- a. A name for the proposed district that distinguishes the district from all other political subdivisions within or contiguous to the area included within the district.
- b. A description of the territory to be included, not necessarily by metes and bounds, but sufficiently accurate to inform the county legislative body and to apprise landowners of the possibility of the inclusion of their land within the district.
- c. A statement of the purposes for which the district is proposed to be established.
- d. A statement of the necessity and urgency of accomplishing the purposes.
- e. A statement that the creation of the district will be conducive to the public health, safety, or welfare, including a summary of the advantages to be derived from the creation of the district.

f. A statement that the costs and damages of the district will probably be less than the benefits to be derived.

g. Whether the petition is conditioned upon a grant of federal or state monies, and whether the conditions that are attached to the grant or grants are acceptable if the monies should be offered. Ind. Code § 36-8-11-7.

***Filed Petition to Establish District Presented by County Auditor to County Legislative Body***

17. After a petition is filed by freeholders or a municipality, the County Auditor must present the petition to the county legislative body at its next regularly scheduled meeting or at a special meeting called for that purpose. Before or at the meeting, the legislative body shall determine whether the petition bears the necessary signatures and complies with requirements as to form and content. The legislative body may not dismiss a petition with the requisite signatures because of alleged defects without permitting amendments to correct errors in form or content. Ind. Code § 36-8-11-8(a).

18. In determining whether the signers of a petition are freeholders, the names as they appear on the tax duplicates are prima facie evidence of the ownership of land. Ind. Code § 36-8-11-8(b).

19. If the legislative body determines that the petition conforms to the requirements of the statute, it may set a date for a public hearing on whether a Fire Protection District should, as a matter of public policy, be established in the area proposed in the petition. The legislative body may also prepare an ordinance or resolution to establish the district for its consideration, in accordance with applicable laws. Ind. Code § 36-8-11-8(c). **A copy of the resolution establishing the Fire Protection District must be provided to the Department.**

***Petition Against Establishment of District***

20. A petition against the establishment of the Fire Protection District may be presented to the county legislative body at or after a hearing on the petition to establish a district and before the adoption of an ordinance or resolution establishing the district. Ind. Code § 36-8-11-9(a).

21. If the legislative body finds that it contains the signatures of fifty-one percent (51%) of the freeholders within the proposed district; **or** of the freeholders who own two-thirds (  $\frac{2}{3}$  ) of the real property within the proposed district, determined by assessed valuation, the legislative body shall dismiss the petition for the establishment of the district. Ind. Code § 36-8-11-9(b).

**Multi-County District**

22. A district may consist of a municipality located in two counties. Ind. Code § 36-8-11-5(c).

### ***Petitions; Signatures of Joint Owners and Corporations; Circulation of Petition***

23. Freeholders within the proposed district who desire the establishment of a Fire Protection District must initiate proceedings by filing a petition to establish the district with the County Auditor of the county where the freeholder's land is located. Ind. Code § 36-8-11-5.1(c).

24. The petitions filed in each county shall be considered parts of one petition. Ind. Code § 36-8-11-5(c). The signature requirement that it be signed by: (1) at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the proposed district; or (2) a majority of those freeholders owning land within the proposed district -- applies to the sum of the signatures on all parts of the petition. *Id.*; Ind. Code § 36-8-11-5(b).

25. If two or more freeholders own the same land in joint title, they may be counted as only one freeholder for the purpose of determining what constitutes twenty percent (20%) or a majority of the freeholders. Ind. Code § 36-8-11-6(b).

26. A freeholder owning land in joint title may sign the petition and the signature shall be counted. However, if two (2) or more freeholders who own the same land in joint title sign the petition, their combined signatures count only as one (1) signature. Ind. Code § 36-8-11-6(c).

27. Any officer authorized by a corporation may sign the petition for a private corporation owning land within the proposed district. The signature is prima facie evidence of the authorization. Ind. Code § 36-8-11-6(d).

28. The petition may be circulated in several counterparts and still be considered a single petition. Ind. Code § 36-8-11-6(e).

### ***Contents of Petition to Establish District***

29. A petition filed by freeholders to create a district consisting of a municipality located in two counties must state the following:

a. A name for the proposed district that distinguishes the district from all other political subdivisions within or contiguous to the area included within the district.

b. A description of the territory to be included, not necessarily by metes and bounds, but sufficiently accurate to inform the county legislative body and to apprise landowners of the possibility of the inclusion of their land within the district.

c. A statement of the purposes for which the district is proposed to be established.

d. A statement of the necessity and urgency of accomplishing the purposes.

e. A statement that the creation of the district will be conducive to the public health, safety, or welfare, including a summary of the advantages to be derived from the creation of the district.

f. A statement that the costs and damages of the district will probably be less than the benefits to be derived.

g. Whether the petition is conditioned upon a grant of federal or state monies, and whether the conditions that are attached to the grant or grants are acceptable if the monies should be offered. Ind. Code § 36-8-11-7.

***County Auditor Verifies Signatures, Presents to Legislative Body of Primary County***

30. The number of freeholders who signed a petition shall be certified by the County Auditor of the county that is the subject of the petition. If a petition is filed in both counties, the County Auditor of the secondary county (i.e., county where the smallest portion of a municipality is located) must forward the petition to the primary county (i.e., county where the largest portion of a municipality is located). Ind. Code § 36-8-11-5.1(c); Ind. Code § 36-8-11-2.

31. The County Auditor of the primary county shall present the petition to the legislative body of the primary county at its next regularly scheduled meeting or at a special meeting called for that purpose. Before or at the meeting, the legislative body shall determine whether the petition bears the necessary signatures and complies with requirements as to form and content. The legislative body may not dismiss a petition with the requisite signatures because of alleged defects without permitting amendments to correct errors in form or content. Ind. Code § 36-8-11-5.1(d).

32. In determining whether the signers of a petition are freeholders, the names as they appear on the tax duplicates are prima facie evidence of the ownership of land. Ind. Code § 36-8-11-5.1(e).

33. If the legislative body of the primary county determines that the petition conforms to the requirements of the law, the primary county or the secondary county, or both, may set a date for a public hearing on whether a Fire Protection District should, as a matter of public policy, be established in the area proposed in the petition. The district is established when both legislative bodies adopt an identical ordinance or resolution establishing the district. Ind. Code § 36-8-11-5.1(f). **A copy of the resolution or ordinance establishing the Fire Protection District must be mailed to the Department.**

***Petition Against Establishment of District***

34. The freeholders owning land within the proposed district may file a petition opposing the establishment of the district with the County Auditor of the county where the freeholder's land is located. If a petition is filed in both counties, the County Auditor of the secondary county shall forward the petition to the primary county and certify to the primary county the number of freeholders who signed the petition. Ind. Code § 36-8-11-9.5(c).

35. A petition against the establishment of the Fire Protection District must be presented to the legislative body of the primary county at or after a hearing on the petition to establish a district and before the adoption of an ordinance or resolution establishing the district. *Id.*

36. If the legislative body of the primary county finds that the petition contains the signatures of fifty-one

percent (51%) of the freeholders within the proposed district or of the freeholders who own two-thirds (2/3) of the real property within the proposed district, determined by assessed valuation, the legislative body shall dismiss the petition for the establishment of the district. Ind. Code § 36-8-11-9.5(d).

### **Board of Fire Trustees**

37. Within thirty (30) days after the ordinance or resolution establishing the district becomes final, the county legislative body must appoint a board of fire trustees. The trustees must be qualified by knowledge and experience in matters pertaining to fire protection and related activities in the district. A person may not be appointed or serve as a trustee who:

- a. is a party to a contract with the district; or
- b. is a member, an employee, a director, or a shareholder of any corporation or association that has a contract with the district. Ind. Code § 36-8-11-12(a).

38. The legislative body shall appoint one trustee from each township or part of a township contained in the district and one trustee from each municipality contained in the district. Ind. Code § 36-8-11-12(a). For a multi-county district, the legislative body of each county where the district is located must jointly appoint one trustee from each township or part of a township contained in the district and one trustee from the municipality contained in the district. *Id.*; Ind. Code § 36-8-11-22.1(d).

39. If the number of trustees selected by this method is an even number, the legislative body shall appoint one additional trustee so that the number of trustees is always an odd number. If the requirements of this section do not provide at least three trustees, the legislative body shall make additional appointments so that there is a minimum of three trustees. Ind. Code § 36-8-11-12(a).

40. The original trustees shall be appointed as follows:

- a. One (1) for a term of one (1) year.
- b. One (1) for a term of two (2) years.
- c. One (1) for a term of three (3) years.
- d. All others for a term of four (4) years. Ind. Code § 36-8-11-12(b).

41. The terms expire on the first Monday of January of the year their appointments expire. As the terms expire, each new appointment is for a term of four years. Ind. Code § 36-8-11-12(b); Ind. Code 36-8-11-22.1(d).

42. If a vacancy occurs on the board, the county legislative body shall appoint a trustee with the qualifications specified for the unexpired term. Ind. Code § 36-8-11-12(c). For a multi-county district, the legislative body of each county shall jointly appoint a member to fill a vacancy. Ind. Code 36-8-11-22.1(d).

### ***Trustees; Meetings***

43. The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October. The county legislative body may order that regular meetings be held more frequently. Ind. Code § 36-8-11-13(a); Ind. Code 36-8-11-22.1(e).

44. Special meetings of the board may be called by the chairman or by two (2) trustees, upon written request to the secretary. At least three (3) days before a special meeting, the secretary shall send to all trustees a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if:

- a. the time of the special meeting has been fixed in a regular meeting; or
- b. all trustees were present at a meeting at which a special meeting was called. Ind. Code § 36-8-11-13(b); Ind. Code 36-8-11-22.1(e).

### ***Trustees; officers; quorum; approval of actions; compensation; offices; records***

45. At the first regular meeting each year, the trustees of the board shall elect a chairman and vice chairman from their number. The vice chairman shall act as chairman during the absence or disability of the chairman. Ind. Code § 36-8-11-14(a); Ind. Code 36-8-11-22.1(e).

46. A majority of the trustees constitutes a quorum. An action of the board is official, however, only if it is authorized by a majority of the trustees at a regular or properly called special meeting. Ind. Code § 36-8-11-14(b); Ind. Code 36-8-11-22.1(e).

47. Each trustee may receive not more than twenty dollars (\$20) a day for each day devoted to the work of the district. In addition, each trustee may be reimbursed for actual expenses, including traveling expense at a rate equivalent to that provided by statute for state employees. Claims for expense reimbursement must be accompanied by an itemized written statement and approved by a recorded motion of the board. Ind. Code § 36-8-11-14(c); Ind. Code 36-8-11-22.1(e).

48. At the time the county legislative body initially appoints the board, it shall order where the board will maintain its offices. The offices may not be changed without approval of the legislative body. The board shall arrange for office space and keep a record of all transactions and minutes of all meetings in the office. All records and minutes shall be kept available for public inspection. Ind. Code § 36-8-11-14(d). For a multi-county district, the county legislative bodies serving the district shall jointly decide where the board shall locate (or approve location of) its office. Ind. Code § 36-8-11-22.1(e).

### ***Powers and Duties of Trustees***

49. The board:

- a. has the same powers and duties as a township executive with respect to fire protection functions, including those duties and powers prescribed by Indiana Code chapter 36-8-13 [township fire protection and



emergency services], although all cooperative and joint actions permitted must be undertaken according to these Fire Protection District processes;

b. has the same powers and duties as a township executive relative to contracting with volunteer firefighting companies, as prescribed by Indiana Code chapter 36-8-12 [volunteer fire companies] and Indiana Code chapter 36-8-13;

c. shall appoint, fix the compensation, and prescribe the duties of a fiscal officer, secretarial staff, persons performing special and temporary services or providing legal counsel, and other personnel considered necessary for the proper functioning of the district; however, a person appointed as fiscal officer must be bonded by good and sufficient sureties in an amount ordered by the county legislative body to protect the district from financial loss;

d. shall exercise general supervision of and make regulations for the administration of the district's affairs;

e. shall prescribe uniform rules pertaining to investigations and hearings;

f. shall supervise the fiscal affairs and responsibilities of the district;

g. may delegate to employees of the district the authority to perform ministerial acts, except in cases in which final action of the board is necessary;

h. shall keep accurate and complete records of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the district;

i. shall make an annual report to the executive and the fiscal body of the county that at least lists the financial transactions of the district and a statement of the progress in accomplishing the purposes for which the district has been established;

j. shall adopt a seal and certify all official acts;

k. may sue and be sued collectively by its legal name with service of process made on the chairman of the board, but costs may not be taxed against the members individually in an action;

l. may invoke any legal, equitable, or special remedy for the enforcement of this chapter or of proper action of the board taken in a court;

m. shall prepare and submit to the fiscal body of the county an annual budget for operation and maintenance expenses and for the retirement of obligations of the district, subject to review and approval by the fiscal body;

n. may, if advisable, establish one or more advisory committees;

o. may enter into agreements with and accept money from a federal or state agency and enter into agreements with a municipality located within or outside the district, whether or not the municipality is a part of the district, for a purpose compatible with the purposes for which the district exists and with the interests of the municipality;

p. may accept gifts of money or other property to be used for the purposes for which the district is established;

q. may levy taxes at a uniform rate on the real and personal property within the district;

r. may issue bonds and tax anticipation warrants;

s. may incur other debts and liabilities;

t. may purchase or rent property;

u. may sell services or property that is produced incident to the operations of the district making a fair and reasonable charge for it;

v. may make contracts or otherwise enter into agreements with public or private persons and federal or state agencies for construction, maintenance, or operations of or in part of the district;

w. may receive and disburse money; and

x. may impose a false alarm fee or service charge under Indiana Code section 36-8-13-4. Ind. Code § 36-8-11-15(a); Ind. Code 36-8-11-22.1(e).

50. Powers granted may be used only to accomplish the purpose or purposes as stated in the ordinance or resolution establishing the district. However, an act of the board necessary and proper to accomplish the purposes for which the district is established is not invalid because it incidentally accomplishes a purpose other than one for which the district is established. Ind. Code § 36-8-11-15(b); Ind. Code 36-8-11-22.1(e).

### **Taxing District**

51. All the real property within a Fire Protection District constitutes a taxing district for the purpose of levying taxes to pay for the construction, operation, and maintenance of district programs and facilities. A tax levied must be levied at a uniform rate upon all taxable property within the district. A Fire Protection District is a "municipal corporation" within the meaning of the Constitution of Indiana and all general statutes. Ind. Code § 36-8-11-16; Ind. Code § 36-8-11-22.1(f).

### **Bonds**

52. Bonds may be issued only against the taxable property of a Fire Protection District and may be paid in part by revenues derived from reasonable charges for services or property produced incident to the operation of the district. Bonds shall be issued in the same manner as conservancy district bonds are issued under

Indiana Code chapter 14-33-11. Ind. Code § 36-8-11-17; Ind. Code § 36-8-11-22.1(f).

### **Annual Budget; Tax Levy**

53. The board shall annually budget the necessary money to meet the expenses of operation and maintenance of the district, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, bond redemption, and all other expenses lawfully incurred by the district. After estimating expenses and receipts of money, the board shall establish the tax levy required to fund the estimated budget. Ind. Code § 36-8-11-18(a); Ind. Code § 36-8-11-22.1(f).

54. The budget must be approved by the county fiscal body and county board of tax adjustment and the Department. Ind. Code § 36-8-11-18(b). For a multi-county district, the budget must be approved by the county fiscal body and county board of tax adjustment *in each county* in the district. Ind. Code § 36-8-11-22.1(f).

55. Upon approval by the Department, the board shall certify the approved tax levy to the County Auditor having land within the district. The County Auditor shall have the levy entered on the County Treasurer's tax records for collection. After collection of the taxes the Auditor shall issue a warrant on the Treasurer to transfer the revenues collected to the board, as provided by statute. Ind. Code § 36-8-11-18(c). For a multi-county district, the County Auditor of each county in the district must perform the duties described above. Ind. Code § 36-8-11-22.1(f).

### **No Duplicate Tax Levies**

56. The Department, when approving a rate and levy fixed by the board, must verify that a duplication of tax levies does not exist between a Fire Protection District and a municipality or township within the boundaries of the district, so that taxpayers do not bear two levies for the same service, except as when indebtedness for fire protection services was incurred before the establishment of a Fire Protection District. Ind. Code §§ 36-8-11-19, -20; Ind. Code § 36-8-11-22.1(f).

### **Indebtedness Incurred Prior to Establishment of District**

57. A unit (i.e., county, city, town, or township) that incurred indebtedness for fire protection services before the establishment of a Fire Protection District must continue to repay that indebtedness by levies within the boundaries of the unit until the indebtedness is paid in full. Ind. Code § 36-8-11-20; Ind. Code § 36-1-2-23.

### **Disbanding Fire Department Not Required**

58. A municipality or township is not required to disband its fire department unless its legislative body consents by ordinance. Ind. Code § 36-8-11-21; Ind. Code § 36-8-11-22.1(f).

### **Limitation on Filing New Petition After Dismissal**

59. If the petition is dismissed because the county legislative body finds the evidence does not support it, a new petition to establish a district under this chapter in essentially the same area may not be addressed to the legislative body for a period of two years after the date of the order dismissing the original petition. Ind. Code § 36-8-11-10.

### **Addition of Area to District**

60. To add area to a Fire Protection District already established, the same procedure must be followed as is provided for the establishment of a district. The petition must be addressed to the legislative body of each county in which the district is located. Ind. Code § 36-8-11-11.

### **Areas Annexed by Municipalities**

61. Any area that is part of a Fire Protection District and is annexed by a municipality that is not a part of the district ceases to be a part of the Fire Protection District when the municipality begins to provide fire protection services to the area. Ind. Code § 36-8-11-22.

### **Merger of Districts**

62. Any Fire Protection District may merge with one or more protection districts to form a single district if at least one-eighth (1/8) of the aggregate external boundaries of the districts coincide. Ind. Code § 36-8-11-23(a).

63. The legislative body of the county where at least two districts are located (or if the districts are located in more than one county, the legislative body of each county) shall, if petitioned by freeholders in the two districts, adopt an ordinance merging the districts into a single Fire Protection District. Ind. Code § 36-8-11-23(b).

64. Freeholders who desire the merger of at least two Fire Protection Districts must initiate proceedings by filing a petition with the County Auditor of each county where a district is located. The petition must be signed:

a. by at least twenty percent (20%), with a minimum of five hundred (500) from each district, of the freeholders owning land within the district; or

b. by a majority of the freeholders from the districts -- whichever is less. Ind. Code § 36-8-11-23(c).

65. The above petition must state the same items as the contents of a petition to establish a district. *See* Ind. Code § 36-8-11-7. The provisions pertaining to the signatures of joint owners and corporations, examination of the signatures by the legislative body, and procedures for petitioning against establishment of the district apply to the petition and to the legislative body of each county in the proposed district. Ind. Code § 36-8-11-23(d); *see* Ind. Code §§ 36-8-11-6, -8, -9.

66. The board of fire trustees for each district shall form a single board, which shall continue to be appointed. *See* Ind. Code § 36-8-11-12. In addition, the provisions relating to the board of fire trustees apply to the board of the merged district, *except* that if the merged district lies in more than one county, the county legislative bodies serving the combined district shall jointly decide where the board shall locate (or approve relocation of) its office. Ind. Code § 36-8-11-23(e); *see* Ind. Code §§ 36-8-11-13, -14, -15.

67. The provisions pertaining to the taxing district, bonds, annual budget, tax levies, and disbanding of fire departments apply to a merged district. *See* Ind. Code §§ 36-8-11-16, -17, -18, -19, -21. However, the budget must be approved by the county fiscal body and county board of tax adjustment in each county in the merged district. In addition, the County Auditor of each county in the district must enter the levy on the County Treasurer's tax records for collection. After collection of the taxes the County Auditor must issue a warrant on the treasurer to transfer the revenues collected to the board. Ind. Code § 36-8-11-23(f); Ind. Code § 36-8-11-18(c).

### **Dissolution of Districts**

68. Proceedings to dissolve a Fire Protection District may be instituted by the filing of a petition with the county legislative body that formed the district. If the proceedings are for dissolution of a multi-county district, the proceedings may be instituted by the filing of a petition with the primary county or the secondary county, or both. Ind. Code § 36-8-11-24(a); Ind. Code § 36-8-11-5.1.

69. The petition must be signed:

a. by at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the district; or

b. by a majority of those freeholders owning land within the district -- whichever is less. Ind. Code § 36-8-11-24(b).

70. The provisions concerning a petition to establish a district apply to a dissolution petition. Ind. Code § 36-8-11-24(c). For a multi-county district, the multi-county district establishment provisions apply to a petition to dissolve the district. Ind. Code § 36-8-11-24(d); Ind. Code § 36-8-11-5.1.

71. A petition against the dissolution of the Fire Protection District may be presented to the county legislative body at or after a hearing on the petition to dissolve a district and before the adoption of an ordinance or resolution dissolving the district. If the legislative body finds that it contains the signatures of fifty-one percent (51%) of the freeholders within the district or of the freeholders who own two-thirds (2/3) of the real property within the district, determined by assessed valuation, the legislative body shall dismiss the petition for the dissolution of the district. Ind. Code § 36-8-11-24(e). For multi-county districts, the petition against the establishment of the multi-county district provisions applies to a petition to dissolve the district. Ind. Code § 36-8-11-24(f); Ind. Code § 36-8-11-9.5.

72. If, after the public hearing, the legislative body determines that dissolution should occur, it must adopt an ordinance dissolving the district. If the district is established as a multi-county district, both legislative bodies of the counties containing the district must adopt ordinances dissolving the district after determining

in a public hearing that the district should be dissolved. Ind. Code § 36-8-11-24(g); Ind. Code § 36-8-11-5.1.

73. A dissolution takes effect three months after the later of the adoption of the above ordinance or the payment of the district's debts and liabilities, including its liabilities under Indiana Code chapter 34-13-2 [contract claims against public employees] and Indiana Code chapter 34-13-3 [tort claims against governmental entities and public employees]. The property owned by the district after payment of debts and liabilities must be disposed of in the manner chosen by the county legislative body or county legislative bodies. Dissolution of a district does not affect the validity of any contract to which the district is a party. Ind. Code § 36-8-11-24(h).

#### ***Appeal County Legislative Body's Decision to Circuit Court***

74. A person aggrieved by a decision made by the county legislative body or county legislative bodies may, within thirty (30) days, appeal the decision to the circuit court for any county in which the district is located. The appeal is instituted by giving written notice to each county legislative body within which the district is located and filing with the circuit court clerk a bond in the sum of five hundred dollars (\$500), with surety approved by the legislative body or legislative bodies. The bond must provide that the appeal will be duly prosecuted and that the appellants will pay all costs if the appeal is decided against them. When an appeal is instituted, the county legislative body or county legislative bodies must file with the circuit court clerk a transcript of all proceedings in the case, together with all papers filed in the case. The county legislative body or county legislative bodies may not take further action in the case until the appeal is heard and determined. Such an appeal must be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted. Ind. Code § 36-8-11-24(i).

#### **Purchase of Firefighting Equipment on Installment Conditional Sale or Mortgage Contract**

75. After a sufficient appropriation for the purchase of firefighting apparatus and equipment, including housing, is made and is available, the district's fiscal officer (i.e., bonded employee of the district charged with the faithful receipt and disbursement of the funds of the district), with the approval of the board and the county fiscal body, may purchase the firefighting apparatus and equipment for the district on an installment conditional sale or mortgage contract running for a period not exceeding:

- a. six (6) years; or
- b. fifteen (15) years for a district that:

(1) has a total assessed value of sixty million dollars (\$60,000,000) or less, as determined by the Department; and

(2) is purchasing the firefighting equipment with funding from the:

(a) state or its instrumentalities; or

(b) federal government or its instrumentalities. Ind. Code § 36-8-11-26; Ind. Code § 36-8-11-2.

76. The purchase shall be amortized in equal or approximately equal installments payable on January 1 and July 1 each year. *Id.*

**Expenditure for Illness or Injury of Full-time, Paid Firefighter; Reimbursement**

77. A Fire Protection District must pay for the care of a full-time, paid firefighter who, during the performance of the firefighter's duties, suffers:

- a. an injury; or
- b. contracts an illness. Ind. Code § 36-8-11-27(a).

78. The Fire Protection District must pay for the following expenses incurred by a full-time, paid firefighter who suffers an injury or contracts an illness during the performance of the firefighter's duties:

- a. Medical and surgical care.
- b. Medicines and laboratory, curative, and palliative agents and means.
- c. X-ray, diagnostic, and therapeutic service, including service provided during the recovery period.
- d. Hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery. Ind. Code § 36-8-11-27(b).

79. Expenditures required above must be paid from the fund used by the district for payment of the costs attributable to providing fire protection services in the Fire Protection District. Ind. Code § 36-8-11-27(c).

80. A Fire Protection District that has paid for the care of a firefighter has a cause of action for reimbursement of the amount paid against any third party against whom the firefighter has a cause of action for:

- a. an injury sustained because of the third party; or
- b. an illness caused by the third party. The Fire Protection District's cause of action is in addition to, and not instead of, the cause of action of the firefighter against the third party. Ind. Code § 36-8-11-27(d).

This memorandum serves as a summary of the law regarding Fire Protection Districts. Please consult with your county attorney to ensure all of the legal processes are properly followed. **If you still have questions after consultation with your county attorney, please contact the Department's Budget Division at (317) 234-5592.**